APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 27436

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

A. T. GARRETT, W. D. WALTERS, AND J. B. MCDANIEL,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Georgia

(December 2, 1969)

Before TUTTLE, COLEMAN, and SIMPSON, Circuit Judges.

PER CURIAM: On January 10, 1969, the District Court for the Northern District of Georgia imposed upon the appellants a civil penalty of one hundred dollars each. The unpublished opinion of the trial court will be annexed hereto as an appendix.

Upon consideration of the record, briefs, and argument of counsel we are of the opinion that the judgment of the District Court should be affirmed.

AFFIRMED.

APPENDIX

[Opinion of the District Court]

"These are four seldom-used proceedings, seeking to recover civil penalties against the defendants under 49 U.S.C.A. §1471(a). Specifically, they are accused of violation of 49 U.S.C.A. §1430(a)(2) which provides that it shall be unlawful

> For any person to serve in any capacity as an airman in connection with any civil aircraft, aircraft engine, propeller or appliance used or intended for use, in air commerce without an airman certificate authorizing him to serve in such capacity, or in violation of any term, condition, or limitation thereof, or in violation of any order, rule, or regulation issued under this subchapter;

"The particular regulations involved are contained in Federal Aviation Regulations 14 CRF 43.13. These regulations, made a part of the statute, prescribe that 'each person maintaining or altering or performing preventive maintenance shall use methods, techniques and practices acceptable to the Administrator.' (14 CRF 43.13(a)). Specifically, the following is provided:

> Special provisions for air carriers and commermercial operators. Unless otherwise notified by the Administrator, the methods, techniques, and practices contained in the maintenance manual or the maintenance part of the air carrier manual of a certfiicated air carrier or commercial operator (that is required by its operating certificate

or approved operating specifications to provide a continuous airworthiness maintenance and inspection program) constitute acceptable means of compliance with this section.

14 CRF 43.13(c).

"The case was presented to the court, on which are made the following

FINDINGS OF FACT

"Each of the defendants was employed on May 13, 1965, at Eastern Air Lines' repair and overhaul assembly facility in Atlanta, under the general supervision of Mr. S. T. White, Manager-Aircraft Maintenance.

"Defendant Garrett occupied the position of Lead Mechanic (or foreman) over an eleven man crew, in which Petsch, Walters, and McDaniel were line mechanics. It is customery for several repair and maintenance jobs to be carried on simultaneously by groups of mechanics under the lead mechanic's direction. Certain regular work is carried on in routine fashion by each crew.

"The particular job in question involved the 'build-up' of an Electra prop. The major overhaul on such equipment is performed in Miami and the component parts shipped to Atlanta for assembly. The details of Electra prop assembly are buried in the manufacturer's (Allison) instructions inserted in the general Eastern maintenance manual. While such instructions are verbose, technical, and beyond the practical comprehension of all except the most experienced mechanics, a literal adherence to them would have effected a proper assembly in this instance.

"In actual practice, the company, Eastern, has developed a work sheet, which lays out by steps the essential of the contents of the maintenance manual though not a formal part thereof. Adherence to such work sheet would likewise have effected a proper assembly in this instance.

"While there was no specific approval by the FAA of the pertinent sections of the maintenance manual or the work sheet, such procedures had been in use for a considerable period of time both by the crews and certificated inspectors. Some 15 props per month were assembled in Atlanta on this basis.

"In the assembly itself, the parts are received in four boxes, two containing the four prop blades, one containing the hub and one the cover. The hub weighs approximately 500 pounds and is mounted by the crew on an assembly stand for working purposes. The key operation is to place the four blades in the proper receptacle at the correct pitch of -4° at 42" stations.

"In this particular instance, number 1 blade was inserted at -8° while blades 2, 3, and 4 were inserted correctly. The assembly passed various inspections and was placed into service, resulting in excessive vibration which lead to the discovery of the error. The responsibility of the inspectors involved is no longer at issue, but only that of the repair crew itself.

"In this instance, Garrett assigned the other defendants to the assembly. Petsch was the more experienced mechanic and was certificated by FAA. McDaniel was the lesser experienced and Walters occupied the dual capacity of mechanic-electrician. All

these participated in the initial set-up. Immediately after the first insertion of the blades, a field emergency with a 727 landing gear failure occurred. As this was a higher priority task, McDaniel and Petsch were called off the prop assembly by Garrett for such work, leaving Walters alone with the prop. Later Petsch and McDaniel returned, but before any additional work began, Petsch was called back to the 727 and had nothing further to do with the assembly.

"The initial part of the assembly is to check the pitch. Initially this is done with a 'devil's level', but the ultimate test is by use of a protractor. If the prop has been inserted into the wrong spline initially, it is necessary to reinsert the blade, always checking out the pitch by means of the protractor. It takes two men to handle each blade and normally the protractor work is checked by two men.

"Under such circumstances, Walters and McDaniel actually performed the work involved by improper seating and/or improper protractor readings. Walters actually initialed the work-sheet and summoned the inspector to approve the work. Neither the assembly stand nor the interruption by work on the field emergency caused or justified the improper assembly, which occured in violation of the worksheet and the maintenance manual. Indeed such conditions are commonplace and render the use of check-sheets even more viable.

CONCLUSIONS OF LAW

"While the statute involved concerns a penalty, it is civil in nature and when it is enacted and the implementing regulations adopted to promote the public good, a reasonable preponderance of the evidence is

sufficient to sustain the government's burden of proof. *United States v. Proper*, 7 Aviation 18.173 (D.C.N.Y. 1962).

"The central issue here, however, is not the quantum of proof, but the argument that the 'check sheet' in question was not tantamount to an FAA approved procedure or, if it is, that it represents an improper delegation of power by the FAA to the carrier. Private mechanics and contract repair bases must have all procedures approved directly by the FAA, while in the case of certificated air carriers as here, the carrier's own 'methods, techniques, and practices contained in the maintenance manual.' — 'constitute acceptable means of compliance with this section.' While the evidence does not reveal an affirmative approval of any such procedure, the regulation is negative in approach in that such procedures are proper 'unless otherwise notified by the Administrator.' Thus, proof of the accepted method carries the burden of establishing the basis for violation. Nor does the absence of the work sheet from the maintenance manual proper, in the court's opinion, destroy its efficacy. As far as the court can tell, the work sheet is merely a practical aid to the mass of detail in the manual proper. To rule that use of a common-sense tool such as this shifts the blame from mechanic to carrier is indeed strained. This court would be far more inclined to condemn a practice which placed the onus of the entire manual on the individual mechanic without such aids.

"Based on years of experience with the methods of certificated carriers, the regulation is reasonable and practical in substituting the carrier's procedures for the minutiae of individual FAA approval. The regu-

latory powers under the Act are broad. See *Doe v. C.A.B.*, 356 F.2d 699 (10th Cir. 1966); *Somlo v. C.A.B.*, 367 F.2d 791 (7th Cir. 1966). It cannot be said that such regulation is unreasonable or arbitrary.

"Based on the above, the evidence reveals a violation by defendants Walters and McDaniel. In this respect, the court is satisfied that they are directly involved. As to Petsch, even the government concedes that he was not involved either directly or indirectly and no showing as to any violation by him has been made. There remains the question of Garrett's culpability, if any. As the lead mechanic, or foreman, he was not directly involved and only exercised general supervisory power over the crew members. Thus the error occurred without his direct participation. No case is found delineating the limits of such responsibility. Under such circumstances the court can only hazard a trend, which in this instance points towards responsibility on Garrett's part also. Generally, the courts have adhered to a rule of non-delegability in such matters. Thus, an employer cannot disclaim responsibility on the grounds that its employees alone erred. *United States v. Lockheed Aircraft Service Int'l.*, 202 F. Supp. 665 (E.D. N.Y. 1962). Nor can an inspector delegate any duties under the statute. *French v. C.A.B.*, 378 F.2d 468 (10th Cir. 1967). Rationally, there is no distinction between these functions and that of the foreman. 'The neglect and oversights of his helpers provide no excuse for the petitioner.' What would be the point in requiring that a foreman be certificated if he does not share responsibility for his crew's performance. Otherwise, a simple assignment clerk is all that would be required or the crew could insist that the inspection failure was the

true fault. On reason, then, the court concludes that the supervising foreman bears equal responsibility with his crew for any violation of the act or regulations thereunder.

"Fortunately, the violation here was not serious. Accordingly, as to defendants Garrett, Walters, and McDaniel a civil penalty of $100.00 each is imposed. As to defendant Petsch, the case is dismissed. Appropriate judgments may be presented by government counsel."

United States Court of Appeals

FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1969

No. 27436

D. C. Docket No. CA 10383, 10385
and 10386 (Consolidated)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

A. T. GARRETT, W. D. WALTERS AND J. B. MCDANIEL,

Defendants Appellants.

Appeal from the United States District Court for the Northern District of Georgia

Before TUTTLE, COLEMAN and SIMPSON,
Circuit Judges

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

It is further ordered that defendants-appellants pay to plaintiff-appellee, the costs on appeal to be taxed by the Clerk of this Court.

December 2, 1969

Issued as Mandate: Jan. 27, 1970

(U. S. Court of Appeals filed Jan. 19, 1970, Edward W. Wadsworth, Clerk)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 27436

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

A. T. GARRETT, W. D. WALTERS AND J. B. McDANIEL,

Defendants Appellants.

Appeal from the United States District Court for the Northern District of Georgia

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Before TUTTLE, COLEMAN and SIMPSON,
Circuit Judges

January 19, 1970)

ON PETITION FOR REHEARING

Before TUTTLE, COLEMAN, and SIMPSON,
Circuit Judges

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

APPENDIX B

STATUTES INVOLVED

Federal Aviation Act of 1958, Title VI, Section 601, 72 Stat. 775, 49 U.S.C., Section 1421:

1421. General safety powers and duties.—(a) Minimum standards—Rules and regulations. The Administrator is empowered and it shall be his duty to promote safety of flight of civil aircraft in air commerce by prescribing and revising from time to time:

(1) Such minimum standards governing the design, materials, workmanship, construction, and performance of aircraft, aircraft engines, and propellers as may be required in the interest of safety;

(2) Such minimum standards governing appliances as may be required in the interest of safety;

(3) Reasonable rules and regulations and minimum standards governing, in the interest of safety, (A) the inspection, servicing and overhaul of aircraft, aircraft engines, propellers, nad appliances; (B) the equipment and facilities for such inspection, servicing, and overhaul; and (C) in the discretion of the Administrator, the periods for, and the manner in, which such inspection, servicing, and overhaul shall be made, including provision for examinations and reports by properly qualified private persons whose examinations or reports the Administrator may accept in lieu of those made by its officers and employees;

(4) Reasonable rules and regulations governing the reserve supply of aircraft, aircraft engines, propellers, appliances, and aircraft fuel and oil, required in the interest of safety, including the reserve supply of aircraft fuel and oil which shall be carried in flight;

(5) Reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen, and other employees, of air carriers; and

(6) Such reasonable rules and regulations, or minimum standards, governing other practices, methods, and procedure, as the Administrator may find necessary to provide adequately for national security and safety in air commerce.

(b) Needs of service to be considered—Classification of standards.—In prescribing standards, rules, and regulations, and in issuing certificates under this title [§§ 1421-1431 of this title], the Administrator shall give full consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety in the public interest and to any differences between air transportation and other air commerce; and he shall make classifications of such standards, rules, regulations, and certificates appropriate to the differences between air transportation and other air commerce. The Administrator may authorize any aircraft, aircraft engine, propeller, or appliance, for which an aircraft certificate authorizing use thereof in air transportation has been issued, to be used in other air commerce without the issuance of a further certificate. The Administrator shall exercise and perform his powers and duties under this Act in such manner as will best tend to reduce or eliminate the possibility of, or recurrence of, accidents in air transportation, but shall not deem himself required to give preference to either air transportation or other air commerce in the administration and enforcement of this title [§§ 1421-1430 of this title].

(c) Exemptions.—The Administrator from time to time may grant exemptions from the requirements of any rule or regulation prescribed under this title [§§ 1421-

1431 of this title] if he finds that such action would be in the public interest. (Aug. 23, 1958, P. L. 85-726, Title VI, § 601, 72 Stat. 775.)

Federal Aviation Act of 1958, Title VI, Section 609, 72 Stat. 779, 49 U.S.C., Section 1429:

1429. Amendment, suspension, and revocation of certificates.—The Administrator may, from time to time, reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, or may reexamine any civil airman. If, as a result of any such reinspection or reexamination, or if, as a result of any other investigation made by the Administrator, he determines that safety in air commerce or air transportation and the public interest requires, the Administrator may issue an order amending, modifying, suspending, or revoking, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate. Prior to amending, modifying, suspending, or revoking any of the foregoing certicfiates, the Administrator shall advise the holder thereof as to any charges or other reasons relied upon by the Administrator for his proposed action and, except in cases of emergency, shall provide the holder of such a certificate an opportunity to answer any charges and be heard as to why such certificate should not be amended, modified, suspended, or revoked. Any person whose certificate is affected by such an order of the Administrator under this section may appeal the Administrator's order to the Board and the Board may, after notice and hearing, amend, modify, or reverse the Administrator's order if it finds that safety in air commerce or air transportation and the public interest do not require affirmation of the Administrator's order. In the conduct of

its hearings the Board shall not be bound by findings of fact of the Administrator. The filing of an appeal with the Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the Board shall finally dispose of the appeal within sixty days after being so advised by the Administrator. The person substantially affected by the Board's order may obtain judicial review of said order under the provisions of section 1006 [§ 1486 of this title], and the Administrator shall be made a party to such proceedings. (Aug. 23, 1958, P. L. 85-726, Title VI, § 609, 72 Stat. 779.)

Federal Aviation Act of 1958, Title VI, Section 610, 72 Stat. 780, 49 U.S.C., Section 1430:

1430. Prohibitions.—(a) Violaitons of title.—It shall be unlawful—

(1) For any person to operate in air commerce any civil aircraft for which there is not currently in effect an airworthiness certificate, or in violation of the terms of any such certificate;

(2) For any person to serve in any capacity as an airman in connection with any civil aircraft, aircraft engine, propeller or appliance used or intended for use, in air commerce without an airman certificate authorizing him to serve in such capacity, or in violation of any term, condition, or limitation thereof, or in violaton of any order, rule, or regulaton issued under this title [§§ 1421-1431 of this title];

(3) For any person to employ for service in connection with any civil aircraft used in air commerce an airman

who does not have an airman certificate authorizing him to serve in the capacity for which he is employed;

(4) For any person to operate as an air carrier without an air carrier operating certificate, or in violation of the terms of any such certificate;

(5) For any person to operate aircraft in air commerce in violation of any other rule, regulation, or certificate of the Administrator under this title [§§ 1421-1431 of this title]; and

(6) For any person to operate a seaplane or other aircraft of United States registry upon the high seas in contravention of the regulations proclaimed by the President pursuant to section 1 of the Act entitled "An Act to authorize the President to proclaim regulations for preventing collisions at sea," approved October 11, 1951 (Public Law 172, Eighty-second Congress; 65 Stat. 406) [33 § 143]; and

(7) For any person holding an air agency or production certificate, to violate any term, condition, or limitation thereof, or to violate any order, rule, or regulation under this title [§§ 1421-1431 of this title] relating to the holder of such certificate.

(b) Exemption of foreign aircraft and airmen.—Foreign aircraft and airmen serving in connection therewith may, except with respect to the observance by such airmen of the air traffic rules, be exempted from the provisions of subsection (a) of this section, to the extent, and upon such terms and conditions, as may be prescribed by the Administrator as being in the interest of the public. (Aug. 23, 1958, P. L. 85-726, Title VI, § 610, 72 Stat. 780.)

Federal Aviation Act of 1958, Title IX, Section 901, 72 Stat. 783, 76 Stat. 149, U.S.C., Section 1471:

1471. Civil penalties. — (a) Safety, economic, and postal offenses.—(1) Any person who violates (A) any provision of title III [§§ 1341-1355 of this title], IV [§§ 1371-1387 of this title], V[§§ 1401-1405 of this title], VI [§§ 1421-1430 of this title], VII [§§ 1441-1443 of this title], or XII [§§ 1521-1523 of this title] of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i) [§ 1482(i) of this title], or any term, condition, or limitation of any permit or certificate issued under title IV [§§ 1471-1387 of this title], or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. If such violation is a continuing one, each day of such violation shall constitute a separate offense: Provided, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

(2) Any such civil penalty may be compromised by the Administrator in the case of violations of titles III [§§ 1341-1355 of this title], V [§§ 1401-1405 of this title], VI [§§ 1421-1430 of this title], or XII [§§ 1521-1523 of this title], or any rule, regulation, or order issued thereunder, or by the Board in the case of violations of titles IV [§§ 1371-1387 of this title] or VII [§§ 1441-

1443 of this title], or any rule, regulation, or order issued thereunder, or under section 1002(i) [§ 1482(i) of this title], or any term, condition or limitation of any permit or certificate issued under title IV [§§ 1371-1387 of this title], or by the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(b) Liens.—In case an aircraft is involved in such violation and the violation is by the owner or person in command of the aircraft, such aircraft shall be subject to lien for the penalty: Provided, That this subsection shall not apply to a violation of a rule or regulation of the Postmaster General. (Aug. 23, 1958, P. L. 85-726, Title IX, § 901, 72 Stat. 783; July 10, 1962, P. L. 87-528, § 12, 76 Stat. 149.)

Federal Aviation Act of 1958, Title IX, Section 903, 72 Stat. 786, 75 Stat. 467, 49 U.S.C., Section 1473:

1473. Venue and prosecution of offenses.—(a) Venue, —The trial of any offense under this Act shall be in the district in which such offense is committed; or if the offense is committed out of the jurisdiction of any particular State or district, the trial shall be in the district where the offender, or any one of two or more joint offenders, is arrested or is first brought. If such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia. Whenever the offense is begun in one jurisdiction and completed in another, or committed in more than one jurisdic-

tion, it may be dealt with, inquired of, tried, determined, and punished in any jurisdiction in which such offense was begun, continued, or completed, in the same manner as if the offense had been actually and wholly committed therein.

(b) Procedure in respect of civil penalties.—(1) Any civil penalty imposed under this Act may be collected by proceedings in personam against the person subject to the penalty and, in case the penalty is a lien, by proceedings in rem against the aircraft, or by either method alone. Such proceedings shall conform as nearly as may be to civil suits in admiralty, except that either party may demand trial by jury of any issue of fact, if the value in controversy exceeds $20, and the facts so tried shall not be reexamined other than in accordance with the rules of the common law. The fact that in a libel in rem the seizure is made at a place not upon the high seas or navigable waters of the United States shall not be held in any way to limit the requirement of the conformity of the proceedings to civil suits in rem in admiralty.

(2) Any aircraft subject to such lien may be summarily seized by and placed in the custody of such persons as the Board or Administrator may by regulation prescribe, and a report of the cause shall thereupon by transmitted to the United States attorney for the judicial district in which the seizure is made. The United States attorney shall promptly institute proceedings for the enforcement of the lien or notify the Board or Administrator of his failure to so act.

(3) The aircraft shall be released from such custody upon payment of the penalty or the amount agreed upon in compromise; or seizure in pursuance of process of any court in proceedings in rem for enforcement of the lien, or notification by the United States attorney of failure to in-

stitute such proceedings; or deposit of a bond in such amount and with such sureties as the Board or Administrator may prescribe, conditioned upon the payment of the penalty or the amount agreed upon in compromise.

(4) The Supreme Court of the United States, and under its direction other courts of the United States, may prescribe rules regulating such proceedings in any particular not provided by law. (Aug. 23, 1958, P. L. 85-726, Title IX, § 903, 72 Stat. 786; Sept. 5, 1961, P. L. 87-197, § 2, 75 Stat. 467.)

APPENDIX C

PERTINENT SECTIONS FROM FEDERAL AVIATION REGULATIONS

14 Federal Code of Regulations, Sections:

§ 43.13 Performance rules (general).

(a) Each person maintaining or altering, or performing preventive maintenance, shall use methods, techniques, and practices acceptable to the Administrator. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

(c) *Special provisions for air carriers and commercial operators.* Unless otherwise notified by the Administrator, the methods, techniques, and practices contained in the maintenance manual or the maintenance part of the air carrier manual of a certificated air carrier or commercial operator (that is required by its operating certificate or approved operating specifications to provide a continuous airworthiness maintenance and inspection program) constitute acceptable means of compliance with this section.

Subpart G—Manual Requirements

§ 121.131. Applicability.

This subpart prescribes requirements for preparing and maintaining manuals by all certificate holders.

§ 121.133. Preparation.

(a) Each domestic and flag air carrier shall prepare and keep current a manual for the use and guidance of flight and ground operations personnel in conducting its operations.

(b) Each supplemental air carrier and commercial operator shall prepare and keep current a manual for the use and guidance of flight, ground operations, and management personnel in conducting its operations.

§ 121.135 Contents.

(a) Each manual required by § 121.133 must—

(1) Include instructions and information necessary to allow the personnel concerned to perform their duties and responsibilities with a high degree of safety;

(2) Be in a form that is easy to revise;

(3) Have the date of last revision on each page concerned; and

(4) Not be contrary to any applicable Federal regulation and, in the case of a flag or supplemental air carrier, any applicable foreign regulation, or the certificate holder's operations specifications or operating certificate.

(b) The manual may be in two or more separate parts, containing together all of the following information, but each part must contain that part of the information that is appropriate for each group of personnel:

(1) General policies.

(2) Duties and responsibilities of each crewmember and appropriate members of the ground organization and in the case of supplemental air carriers and commercial operators, management personnel.

(3) Reference to appropriate Federal Aviation Regulations.

(4) Flight dispatching and operational control, including procedures for coordinated dispatch or flight control or flight following procedures, as applicable.

(5) En route flight, navigation, and communication procedures, including procedures for the dispatch or release or continuance of flight if any item of equipment required for the particular type of operation becomes inoperative or unserviceable en route.

(6) For domestic or flag air carriers, appropriate information from the en route operations specifications, including for each approved route the types of aircraft authorized, their crew complement, the type of operation such as VFR, IFR, day, night, etc., and any other pertinent information.

(7) For supplemental air carrier or commercial operators, appropriate information from the operations specifications, including the area of operations authorized, the types of aircraft authorized, their crew complement, the type of operation such as VFR, IFR, day, night, etc., and any other pertinent information.

(8) Appropriate information from the airport operations specifications, including for each airport—

(i) Its location (domestic and flag air carrier operations only);

(ii) Its designation (regular, alternate, provisional, etc.) (domestic and flag air carrier operations only);

(iii) The types of aircraft authorized (domestic and flag air carrier operations only);

(iv) Instrument approach procedures;

(v) Landing and takeoff minimums; and

(vi) Any other pertinent information.

(9) Takeoff, en route, and landing weight limitations.

(10) Procedures for familiarizing passengers with the use of emergency equipment, during flight.

(11) Emergency equipment/and procedures.

(12) The method of designating succession of command of flight crewmembers.

(13) Procedures for determining the usability of landing and takeoff areas, and for disseminating pertinent information thereon to operations personnel.

(14) Procedures for operating in periods of ice, hail, thunderstorms, turbulence, or any potentially hazardous meteorological condition.

(15) Airman training programs, including appropriate ground, flight, and emergency phases.

(16) Instructions and procedures for maintenance, preventive maintenance, and servicing.

(17) Time limitations, or standards for determining time limitations, for overhauls, inspections, and checks of airframes, engines, propellers, and appliances.

(18) Procedures for refueling aircraft, eliminating fuel contamination, protection from fire (including electrostatic

protection), and supervising and protecting passengers during refueling.

(19) Airworthiness inspections, including instructions covering procedures, standards, responsibilities, and authority of inspection personnel.

(20) Methods and procedures for maintaining the aircraft weight and center of gravity within approved limits.

(21) Where applicable, pilot and dispatcher route and airport qualification procedures.

(22) Accident notification procedures.

(23) Other information or instructions relating to safety.

(c) Each certificate holder shall maintain at least one complete copy of the manual at its principal operations base.

§ 121.137 Distribution.

(a) Each certificate holder shall furnish copies of the manual required by § 121.133 (and the changes and additions thereto) or appropriate parts of the manual to—

(1) Its appropriate ground operations and maintenance personnel;

(2) Crewmembers; and

(3) Representatives of the Administrator assigned to it.

(b) Each person to whom a manual or appropriate parts of it are furnished under paragraph (a) of this section shall keep it up to date with the changes and additions furnished to him.

Subpart L—Maintenance, Preventative Maintenance, and Alterations

§ 121.361 Applicability.

This subpart prescribes requirements for maintenance, preventative maintenance, and alterations for all certificate holders.

§ 121.363 Responsibility for airworthiness.

(a) Each certificate holder is primarily responsible for—

(1) The airworthiness of its aircraft, including airframes, aircraft enginers, propellers, appliances, and parts thereof; and

(2) The performance of the maintenance, preventive maintenance, and alteration of its aircraft, including airframes, aircraft engines, propellers, or appliances, and parts thereof, in accordance with its manual and the regulations of this chapter.

(b) A certificate holder may make arrangements with another person for the performance of any maintenance, preventive maintenance, or alterations. However, this does not relieve the certificate holder of the responsibility specified in paragraph (a) of this section.

§ 121.365 Maintenance, preventive maintenance, and alteration organization.

(a) Each certificate holder that performs any of its maintenance (other than required inspections), preventive maintenance, or alterations, and each person with whom it arranges for the performance of that work must have an organization adequate to perform the work.

(b) Each certificate holder that performs any inspec-

tions required by its manual in accordance with § 121.369(b) (2) or (3) (in this subpart referred to as "required inspections") and each person with whom it arranges for the performance of that work must have an organization adequate to perform that work.

(c) Each person performing required inspections in addition to other maintenance, preventive maintenance, or alterations, shall organize the performance of those functions so as to separate the required inspection functions from the other maintenance, preventive maintenance, and alteration functions. The separation shall be below the level of administrative control at which overall responsibility for the required inspection functions and other maintenance, preventive maintenance, and alterations functions are exercised.

§ 121.367 Maintenance, preventive maintenance, and alterations program.

Each certificate holder shall have an inspection program and a program covering other maintenance, preventive maintenance, and alterations that ensures that—

(a) Maintenance, preventive maintenance, and alterations performed by it, or by other persons, are performed in accordance with the certificate holder's manual;

(b) Competent personnel and adequate facilities and equipment are provided for the proper performance of maintenance, preventative maintenance, and alterations; and

(c) Each aircraft released to service is airworthy and has been properly maintained for operation in air transportation.

§ 121.369 Manual requirements.

(a) The certificate holder shall put in its manual a chart or description of the certificate holder's organization required by § 121.365 and a list of persons with whom it has arranged for the performance of any of its required inspections, other maintenance, preventive maintenance, or alterations, including a general description of that work.

(b) The certificate holder's manual must contain the programs required by § 121.367 that must be followed in performing maintenance, preventive maintenance, and alterations of that certificate holder's airplanes, including airframes, aircraft engines, propellers, appliances, and parts thereof, and must include at least the following:

(1) The method of performing routine and nonroutine maintenance (other than required inspections), preventive maintenance, and alterations.

(2) A designation of the items of maintenance and alteration that must be inspected (required inspections), including at least those that could result in a failure, malfunction, or defect endangering the safe operation of the aircraft, if not performed properly or if improper parts or materials are used.

(3) The method of performing required inspections and a designation by occupational title of personnel authorized to perform each required inspection.

(4) Procedures for the reinspection of work performed pursuant to previous required inspection findings ("buy-back procedures").

(5) Procedures, standards, and limits necessary for required inspections and acceptance or rejection of the items required to be inspected and for periodic inspection and calibration of precision tools, measuring devices, and test equipment.

(6) Procedures to ensure that all required inspections are performed.

(7) Instructions to prevent any person who performs any item of work from performing any required inspection of that work.

(8) Instructions and procedures to prevent any decision of an inspector, regarding any required inspection from being countermanded by persons other than supervisory personnel of the inspection unit, or a person at that level of administrative control that has overall responsibility for the management of both the required inspection functions and the other maintenance, preventive maintenance, and alterations functions.

(9) Procedures to ensure that required inspections, other maintenance, preventive maintenance, and alterations that are not completed as a result of shift changes or similar work interruptions are properly completed before the aircraft is released to service.

§ 121.371 Required inspection personnel.

(a) No person may use any person to perform required inspections unless the person performing the inspection is appropriately certified, properly trained, qualified, and authorized to do so.

(b) No person may allow any person to perform a required inspection unless, at that time, the person performing that inspection is under the supervision and control of an inspection unit.

(c) No person may perform a required inspection if he performed the item of work required to be inspected.

(d) Each certificate holder shall maintain, or shall determine that each person with whom it arranges to per-

form its required inspections maintains, a current listing of persons who have been trained, qualified, and authorized to conduct required inspections. The persons must be identified by name, occupational title, and the inspections that they are authorized to perform. The certificate holder (or person with whom it arranges to perform its required inspections) shall give written information to each person so authorized describing the extent of his responsibilities, authorities, and inspectional limitations.

The list shall be made available for inspection by the Administrator upon request.

APPENDIX D—PLATE I-A*

A. Vertical axis of hub inclined 2° left — view facing point of tractor orientation.

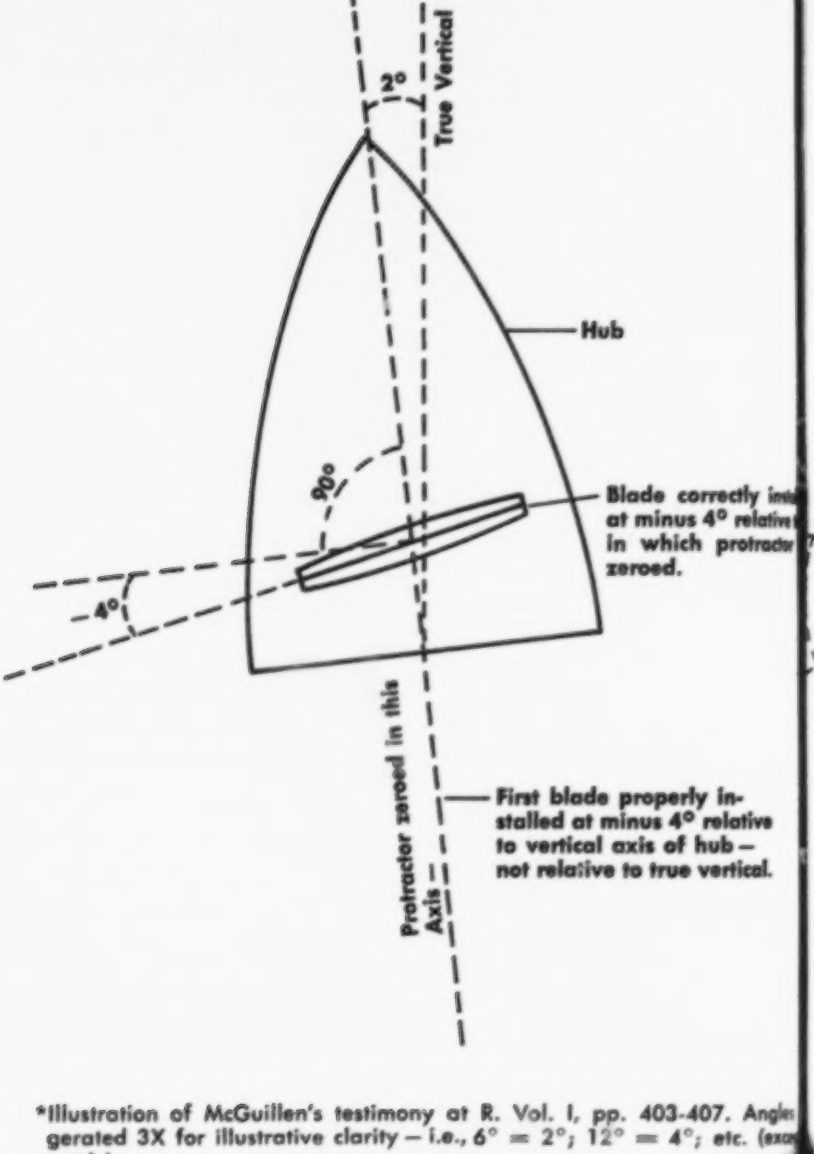
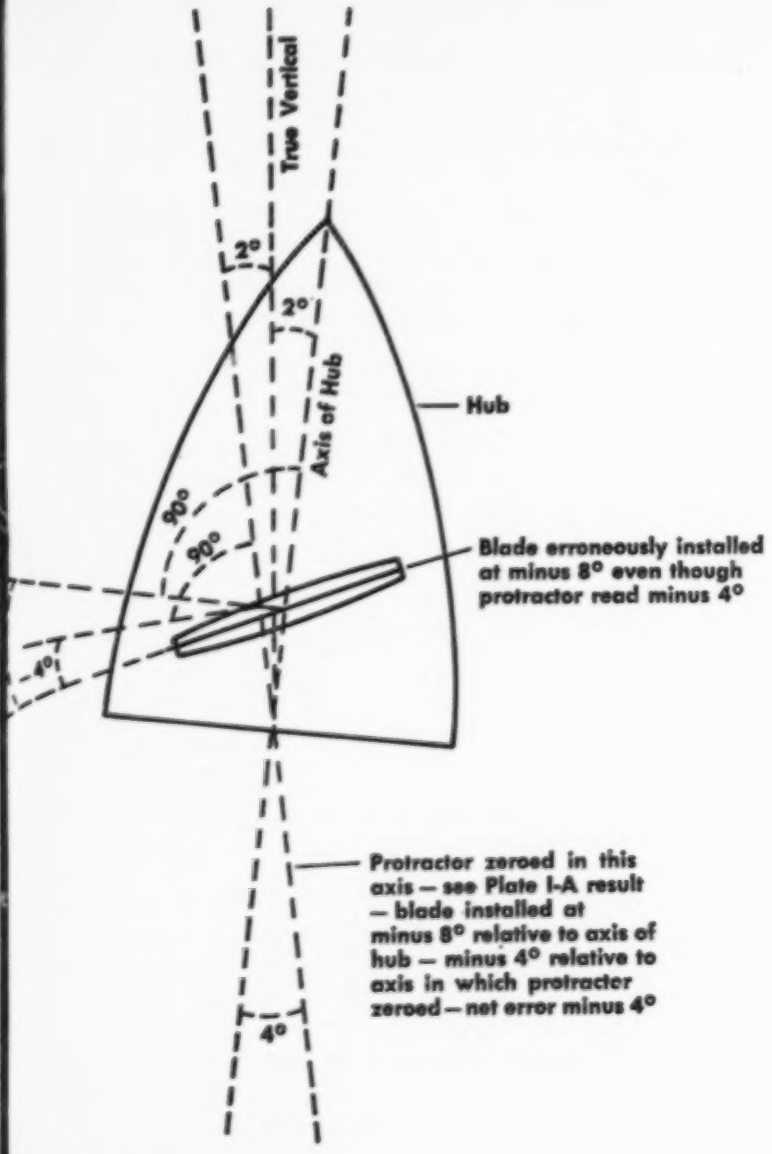


*Illustration of McGuillen's testimony at R. Vol. I, pp. 403-407. Angles gerated 3X for illustrative clarity — i.e., 6° = 2°; 12° = 4°; etc. (exc angle).

APPENDIX D—PLATE I-B*

tical axis of hub inclined 2° right — view opposite (at 180°) m Plate I-A view protractor not rezeroed following Plate I-A tallation.


True Vertical
2°
2°
Axis of Hub
Hub
90°
90°
Blade erroneously installed at minus 8° even though protractor read minus 4°
4°
Protractor zeroed in this axis — see Plate I-A result — blade installed at minus 8° relative to axis of hub — minus 4° relative to axis in which protractor zeroed — net error minus 4°
4°

aggerated 3X as in Plate I-A.

APPENDIX E

List and Thumbnail Summary of Reported Decisions in Civil Penalty Cases

B & M Leasing Corp. v. United States, 331 F.2d 592, 5th Cir., 1964:

> Civil penalty for violation of F.A.A. rule requiring a commercial operator's certificate and a second pilot for aircraft carrying passengers where evidence revealed lease arrangement was sham.

Allen W. Hayes v. United States, 264 F.2d 929, 2nd Cir., 1959:

> Where United States brought civil penalty libel for violation of airworthiness directive requiring a landing gear lock, the directive could not be challenged in the district court procedure—administrative procedure provided for challenges to technical directives must first be exhausted.

Rawdon v. United States, 364 F.2d 803, 9th Cir., 1966, cert. den. 386 U.S. 909, re'h. den. 386 U.S. 1043:

> Civil penalty for inspecting aircraft while inspector's certificate was suspended.

Rosenhan v. United States, 131 F.2d 932, 10th Cir., 1942, cert.den. 318 U.S. 790:

> Civil penalty for operating aircraft without certificate of airworthiness required by statute.

United States v. Aero Spacelines, Inc., 361 F.2d 916, 9th Cir., 1966:

> Aircraft leased exclusively to NAASA is a "public" aircraft and operator is not required to have commercial license required of civil aircraft operators.

United States v. Clayton, 198 F.Supp. 18, W.D. La., 1961:

Civil penalty for violation of C.A.B. air traffic rule under 1938 statute.

United States v. Duncan, 280 F.Supp. 975, N.D. Tex., 1968:

Violation of rule of F.A.A. requiring oxygen mask for pilot at or over 25,000 ft. when only one pilot at controls.

United States v. Drumm, 50 F.Supp. 451, 55 F.Supp. 151, D.C. Nev., 1944:

Civil penalty for flying without pilot's certificate.

United States v. Krebs, 104 F.Supp. 670, D.C. Nebr., 1952:

Venue question in civil penalty case.

United States v. Lockheed Aircraft Service International, Inc., 202 F.Supp. 665, E.D. N.Y., 1962:

Repair station is responsible for negligent repair by its mechanics and inspectors even though they are certificated.

United States v. Northwest Airlines, Inc., 69 F.Supp. 482, D.C. Minn., 3rd Div., 1946:

Airline responsible for refusal of pilot to permit F.A.A. inspector access to flight deck for inspection.

United States v. Proper, 7 Avi. 18,173, U.S.D.C., N.Y., 1962:

Pilot not responsible for civil penalty where F.A.A. regulations were ambiguous as to right of inspector's access to flight deck of aircraft and he relied on airline rules.